



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,183	07/12/2001	Cheryl Volkman	13012.5US01	1161

23552 7590 03/27/2003

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

HARRIS, STEPHANIE N

ART UNIT	PAPER NUMBER
----------	--------------

3636

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,183

Applicant(s)

VOLKMAN ET AL.

Examiner

Stephanie N. Harris

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-17 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17 and 19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Downer (USPN 5112103).

Regarding claim 1, Downer discloses a stool is comprised of a seat (1), and a base (4) that has a front and back that corresponds to a front and back of the stool, respectively. The base is elongated from the back to the front along a longitudinal axis and because of its circular shape, it tapers from a first width at the back to a second, narrower width at the front. The base (4) has a convex bottom surface that defines an upwards extending nose (5) at the front of the base as seen in Figure 7. A post (2) is connected to the seat (1) as seen in Figure 1.

Regarding claims 2 and 3, the base (4) includes a stabilization region (11), where the majority of the stabilization region is located rearward of the post (2) as seen in Figure 3.

Regarding claim 4, the stabilization region is a flattened region as seen in Figure 3.

Regarding claim 5, the concave top surface of the base (4) can be used as a storage compartment as seen in Figure 4.

Regarding claim 7, the base is elongated from the back to the front along a longitudinal axis, due to its circular shape. The base comprises two opposite sides with convex curvatures as seen in Figure 7. The opposite sides extend between the front end and the back end of the base. The opposite sides converge towards a nose (5), which can be located at the front end of the base as seen in Figure 7.

Regarding claim 8, the seat (1) has a front and back that corresponds to the front and back of the stool, respectively as seen in Figure 1. The first and second sides are adjacent to the front and back as seen in Figure 1. The seat is elongated from the first and second sides as seen in Figure 7. The seat is elongated transverse with respect to the longitudinal axis of the base.

Regarding claim 9, the seat (1) is contoured as seen in Figure 7.

Regarding claim 10, the nose (5) is rounded and extends upwardly as seen in Figure 4. The bottom surface of the base (4) at the nose further comprises discrete protrusions (6) as seen in Figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 10, 15-17, 19, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer (USPN 5112103) in view of Willingham (USPN 5887951).

Downer discloses a stool with a base (4), a seat (1), and a post (2) connecting the base and the seat as seen in Figure 1. The base has a front and back that corresponds to the front and back of the stool. The base (4) comprises a top and bottom surface, where the top surface is concave as seen in Figure 4. The concave top surface of the base (4) can be used as a storage compartment as seen in Figure 4. Regarding claim 21, the seat is shaped so that a seated user's center of gravity can be positioned rearward of the post.

Downer shows all of the teachings of the claimed invention but fails to show the use of a base that tapers from a first width at the back to a second narrower width at the front.

Willingham discloses a base that tapers from a first width at the back to a second narrower width at the front as seen in Figure 2a. The base has a convex bottom surface that defines an upward extending nose (30) at the front of the base as seen in Figures 1 and 2a. The base has a stabilization region, which is a flattened region that is located by element x1 in Figure 3a that can be placed rearward of the post. The base comprises two opposite sides with convex curvatures as seen in Figure 1. Regarding claim 7, the opposite sides extend between the front end and the back end of the base, converging towards a nose (30) located at the front end of the base as seen in Figure 2a. Regarding claim 10, the nose is rounded and extends upwardly as seen in Figure 2a.

Regarding claim 19, the base has a first contour that can be located forward of the post. The first contour (24) has a first convex curvature in a direction transverse to the longitudinal axis for allowing side-to-side pivoting. The base includes a second contour (16) that extending a direction along the longitudinal axis for allowing front to back pivoting. The stabilization region can be configured to stabilize the stool by limiting side-to-side pivoting when the stool is upright without interfering with front to back pivoting and without limiting side-to-side pivoting when the stool is pivoted forwardly.

Regarding claims 15-17, Downer in view of Willingham discloses all of the claimed structure of the instant invention. Downer in view of Willingham lacks only the specifically recited method steps.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the invention to use the stool of Downer in view of Willingham by the claimed method steps. Such a modification provides a conventional and efficient method of using the device of Downer in view of Willingham.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downer (USPN 5112103) in view of Willingham (USPN 5887951) and of Ferguson (USPN 6062638).

Downer and Willingham have been described above. Downer in view of Willingham shows all of the teachings of the claimed invention but fails to show the use of a post that is adjustable in height. Ferguson discloses a post (22) that is adjustable in height (Abstract). It would have been obvious to one of ordinary skill in the art at the

time of the invention to modify the post of Downer in view of Willingham by replacing it with the height adjustable post, as shown by Ferguson, in order to allow the occupant of the stool to choose the height adjustment.

Claims 8, 9, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Willingham and Pagano et al. (USPN 5337427).

Downer in view of Willingham have been described above. Downer in view of Willingham shows all of the teachings of the claimed invention but fails to show the use of an elongated, contoured seat with handles.

Pagano et al. discloses a seat 20 that has a front and back that can correspond to the front and back of the stool. First and second sides are adjacent to the front and back. The seat is elongated from the first and second sides and can be transverse with respect to a longitudinal axis of a base as seen in Figure 2. Handles (38) are positioned at the first and second sides of the seat as seen in Figure 2. The seat is contoured as seen in Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the seat of Downer in view of Willingham by replacing it with the elongated, contoured seat with handles, as shown by Pagano et al., in order to assist with positioning and stabilizing.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Willingham and Sherman (USPN 5891546).

Downer in view of Willingham and have been described above. Downer in view of Willingham and shows all of the teachings of the claimed invention but fails to show the base bottom surface being comprised of a non-slip surface. Sherman discloses a non-slip surface with protrusions that can be used (Col. 4, lines 33-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base bottom surface of Downer in view of Willingham and Sherman by applying the non slip surface, as shown by Sherman, in order to help prevent the stool from slipping.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Willingham and Hoover et al. (USPN 1976170)

Downer in view of Willingham has been described above. Downer in view of Willingham shows all of the teachings of the claimed invention but fails to show the use of base with a hole. Hoover et al. discloses a base (1) that has a hole (5), which could be used to hang the base as seen in Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base of Downer in view of Willingham by replacing it with the base with a hole, as shown by Hoover et al., in order to additionally provide a hand holder for the base.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downer (USPN 5112103) in view of Ferguson (USPN 6062638).

Downer has been described above. Downer shows all of the teachings of the claimed invention but fails to show the use of a post that is adjustable in height. Ferguson discloses a post (22) that is adjustable in height (Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the post of Downer by replacing it with the height adjustable post, as shown by Ferguson, in order to allow the occupant of the stool to choose the height adjustment.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Pagano et al. (USPN 5337427).

Downer has been described above. shows all of the teachings of the claimed invention but fails to show the use of an elongated, contoured seat with handles.

Pagano et al. discloses a seat 20 that has a front and back that can correspond to the front and back of the stool. First and second sides are adjacent to the front and back. The seat is elongated from the first and second sides and can be transverse with respect to a longitudinal axis of a base as seen in Figure 2. Handles (38) are positioned at the first and second sides of the seat as seen in Figure 2. The seat is contoured as seen in Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the seat of Downer by adding handles positioned at a first and

second side of the seat, as shown by Pagano et al., in order to assist with positioning and stabilizing.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Sherman (USPN 5891546).

Downer has been described above. Downer shows all of the teachings of the claimed invention but fails to show the base bottom surface being comprised of a non-slip surface. Sherman discloses a non-slip surface with protrusions that can be used (Col. 4, lines 33-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base bottom surface of Downer, by applying the non slip surface, as shown by Sherman, in order to help prevent the stool from slipping.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Hoover et al. (USPN 1976170)

Downer has been described above. Downer shows all of the teachings of the claimed invention but fails to show the use of base with a hole. Hoover et al. discloses a base (1) that has a hole (5), which could be used to hang the base as seen in Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base of Downer by replacing it with the base with a hole, as shown by Hoover et al., in order to additionally provide a hand holder for the base.

Claims 15-17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downer in view of Haynes (USPN 5112103).

Regarding claim 21, the seat (1), as disclosed by Downer is shaped so that a user's selected sitting position can place the user's center of gravity to be positioned rearward of the post (2).

Regarding claim 19, Downer shows all of the teachings of the claimed invention but fails to show a base that can pivot side to side.

Haynes discloses a base (20) that includes a first contour located forward of a post (22). Due to its circular shape, the first contour has a first convex curvature in a direction transverse to the longitudinal axis for allowing side to side pivoting as seen in Figure 1. The base, inherently includes a second contour extending in a direction along the longitudinal axis for allowing front to back pivoting as seen in Figure 1.

A stabilization region (21), as seen in Figure 3, can be configured to stabilize the stool by limiting side to side pivoting when the stool is upright without interfering with front to back pivoting and without limiting side to side pivoting when the stool is pivoted forwardly.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the base of Downer, by replacing it with the bottom surface of the base, shown by Haynes, in order to provide rocking motion for the base.

Regarding claims 15-17, Downer in view of Haynes discloses all of the claimed structure of the instant invention. Downer in view of Haynes lacks only the specifically recited method steps.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art at the time of the invention to use the stool of Downer in view of Haynes by the claimed method steps. Such a modification provides a conventional and efficient method of using the device of Downer in view of Haynes.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie N. Harris whose telephone number is 703-305-1838. The examiner can normally be reached on Monday-Friday from 9am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo, can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

March 20, 2003

SNH


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600